

EXHIBIT 12

GARSNEIC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 NEIMAN NIX, et al.,

4 Plaintiffs,

5 v.

16 Civ. 5604 (ALC)

6 MAJOR LEAGUE BASEBALL, et al.,

7 Defendants.

8 -----x

9 New York, N.Y.
October 27, 2016
2:00 p.m.

10 Before:

11 HON. ANDREW L. CARTER, JR.,

12 District Judge

13 APPEARANCES

14 NISAR & MASON, P.C.

15 Attorneys for Plaintiffs

16 BY: MAHIR S. NISAR

17 -and-

18 THE LAW OFFICE OF STEVEN A. MORELLI

19 Attorneys for Plaintiffs

20 BY: VINCENT P. WHITE

21 KOBRE & KIM LLP

22 Attorneys for Defendants

23 BY: STEVEN G. KOBRE

24 LINDSEY WEISS HARRIS

25 ALSO PRESENT: Sean M. Power, Paralegal

(Case called)

MR. WHITE: Vincent White.

MR. NASIR: Mahir Nasir. Good morning, your Honor.

MR. KOBRE: Your Honor, Steven Kobre, along with Lindsay Weiss Harris, and also from our office is Sean Power, who, your Honor, is not a lawyer. He is an analyst. I ask permission if he can sit in the well for the conference.

THE COURT: All right. Good afternoon.

We are here for a premotion conference. The defendants want to file a motion to dismiss for lack of subject matter jurisdiction.

What is the plaintiff's position on this?

MR. NASIR: Your Honor, the plaintiff's position on this is that the underlying cause of action led to the tortious interference and defamation. These are primarily tortious acts committed by the MLB.

With respect to the diversity jurisdiction argument that the defendant is claiming as a basis to have this case dismissed, there is nothing that says that New York is not a proper jurisdiction, as far as them having citizenship here, as well. There is complete diversity of all parties.

My client, both of our plaintiffs' clients, one is from Florida, one is from Texas. And they have diversity by the fact they have, also, New York citizenship.

But the underlying basis is that there is tortious

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1 acts. All of the witnesses, all of the allegations that deal
2 with the IP addresses being originating in New York, and these
3 aspects of the individuals that were involved all originate out
4 of New York.

5 So, it would be a convenient forum for this matter to
6 continue here.

7 THE COURT: My understanding is, at this point, the
8 defendants aren't intending to make a motion on *forum non*
9 *conveniens* or personal jurisdiction. They are attacking
10 subject matter jurisdiction, in particular, diversity of
11 citizenship.

12 MR. NASIR: Correct.

13 THE COURT: The defendants' contention is that Major
14 League Baseball is an unincorporated association, as you stated
15 in the complaint, that it is an unincorporated course. In
16 fact, the Major League Baseball is an unincorporated
17 association. It is not a citizen of any one particular state,
18 but its citizenship is derived by the citizenship of all of its
19 members.

20 It is not a question of whether or not -- to me, it
21 doesn't seem there is an issue of whether or not Major League
22 Baseball or any of the defendants have a domicile in New York.
23 The issue is that plaintiffs claim to being domiciliaries of
24 Texas and, I believe, Florida, and Major League Baseball has
25 teams in Texas and in Florida.

1 And as an unincorporated association, if that is the
2 case, then Major League Baseball is a citizen of Texas and
3 Florida and every other state where it has a team, therefore,
4 that would destroy diversity of citizenship.

5 What is your position on that?

6 MR. NASIR: Your Honor, my position on that is they
7 also have citizenship in New York, as well.

8 THE COURT: Why does that matter? It doesn't matter
9 that they also have citizenship in New York. The issue is, if
10 they have citizenship in Florida and citizenship in Texas,
11 diversity is gone.

12 A defendant or a plaintiff may have multiple -- the
13 defendant may have multiple citizenships, as they do in this
14 case. It's not an issue of whether or not there is personal
15 jurisdiction in New York. It's not an issue, at this point,
16 whether New York is the proper forum, but what is it that you
17 claim would save diversity jurisdiction in this case or create
18 diversity jurisdiction in this case, in terms of whether or not
19 Major League Baseball is a citizen of Texas and Florida,
20 regardless of how many other states it may be a citizen of

21 MR. NASIR: Your Honor, the law is clear. I am not
22 questioning or disputing the citizenship of Florida and Texas,
23 as far as the member associations, as a part of this
24 unincorporated association.

25 The underlying issue is that these are acts that are

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1 directly caused by the principal place of this unincorporated
2 association, which apparently has a lot of leeway under the
3 law, and they are engaged in tortious acts. And based upon the
4 case law that they cited in their underlying subject matter
5 jurisdiction dismissal, based upon diversity jurisdiction, I
6 mean, the court did take into account that they would retain
7 jurisdiction based upon the basis of the state law court claims
8 that are underlying it.

9 Now, it is a matter of this court's discretion whether
10 it seeks to eliminate this on the basis that there is no
11 diversity, but the basis is that there is an unincorporated
12 association, which is directed by this department of
13 investigations, the MLB, which I understand is unincorporated,
14 but it is engaging in tortious acts on behalf of itself, not so
15 much on behalf of its members.

16 THE COURT: Can you be a little clearer as to what
17 your point is? I want to make sure I understand exactly what
18 your position is.

19 The issue is not whether there is a claim here. The
20 issue is federal courts are courts of limited jurisdiction.
21 The issue is whether or not this claim should be here or in
22 state court somewhere. It's not an issue of whether or not you
23 have a claim at this point.

24 The issue is I am a court of limited jurisdiction.
25 There are two ways that I can have jurisdiction, whether there

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1 is diversity of citizenship -- generally two ways -- and
2 whether there are federal questions. There are no federal
3 questions claimed in this case. The basis of jurisdiction of
4 subject matter jurisdiction is diversity of citizenship.

5 It seems to me that there is a real issue here with
6 the unincorporated association, as you have set forth in the
7 complaint, having citizenship in Texas and in Florida, because
8 if Major League Baseball is a citizen of Texas and Florida and
9 how many other states, and the plaintiffs are citizens of Texas
10 and Florida, there is no diversity of citizenship, and this
11 case would not be properly in federal court. It doesn't mean
12 the case can't be brought in state court or someplace else.

13 I want to make sure I clearly understand what your
14 position is. You keep saying this is a tortious act. I want
15 to make sure I understand the relevance of that position in
16 terms of subject matter jurisdiction here.

17 MR. NASIR: Your Honor, respectfully, I understand
18 what you're saying, and it is very clear as far as the issue of
19 diversity jurisdiction.

20 I am looking for more of a discretionary measure on
21 the part of the court with respect to the underlying claim in
22 New York related to the tortious acts conducted by the MLB,
23 where the office is maintained here as the principal place of
24 New York.

25 There is no question that they also have members here

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1 in New York, as well, I understand in Florida and Texas as
2 well, but they do have citizenship here in New York as well.
3 Because of that, and because of that aspect, that is what I am
4 pleading here.

5 THE COURT: Well, the problem is, I don't have
6 discretion to give myself jurisdiction where I don't have it.
7 If there is no jurisdiction, I cannot hear the case.
8 Jurisdiction is about whether or not I have the authority to
9 entertain the case.

10 This is not an issue of there is jurisdiction, but I'm
11 choosing to abstain from exercising that jurisdiction. This is
12 an issue of whether or not I have jurisdiction to hear this
13 matter in the first place.

14 I don't have discretion to ignore a lack of subject
15 matter jurisdiction. That, I don't have discretion to do. But
16 I just want to make sure I have given you a full opportunity
17 and I fully understand your point.

18 Can you tell me more? Do you have more on this?

19 MR. NASIR: My argument is simple. To the extent
20 that, while I understand that the MLB is also a citizen of
21 Florida and Texas, they also happen to be a citizen of New
22 York, and the acts that occurred and that were conducted by the
23 MLB -- acting as a unit of an entity of its own, not on behalf
24 of its members, but as its own unincorporated association --
25 conducted acts that were tortious against the plaintiff.

1 Now, that is the basis where I believe that this court
2 has subject matter jurisdiction for this case and where
3 diversity exists.

4 THE COURT: OK. Let me hear from defendants.

5 MR. KOBRE: A couple things, your Honor.

6 I am perplexed by the theory, which I think just runs
7 counter to settled law related to diversity. When the test is,
8 you look to the parties on both sides of the V, there needs to
9 be diversity.

10 It sounds like counsel isn't even disputing the fact
11 that there is no diversity on each side of the V, based on
12 Florida and Texas, but is arguing some sort of connection to
13 New York, and therefore somehow that permits diversity. There
14 is no authority for it whatsoever.

15 Before your Honor, with respect, if I may, sort of
16 perhaps sends us away, I would make one plea to your Honor. I
17 know your Honor referenced the possibility that they can go to
18 the New York State court and file their claims in New York
19 State court.

20 One thing I will say is, we have been down this road
21 before with this defendant. Since 2012 we have been dealing
22 with this defendant. In 2014, they basically, in Florida state
23 court, filed essentially the same claims, and through a failure
24 to prosecute involving not showing up to hearings, not
25 complying with the Florida rules, what happened there, your

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1 Honor, the case was dismissed and the judge himself said that
2 the court's patience has run.

3 The reason why I say that is because now we are here
4 in your Honor's court. We are essentially in basically the
5 same position. In other words, after a press conference and
6 press release and otherwise, they file a complaint. We reach
7 out to them and basically want to discuss diversity
8 jurisdiction, because we don't believe that the court has
9 jurisdiction.

10 Rather than engage us, we are told, just file your
11 motion. So, we send them a Rule 11 letter and a draft motion
12 saying, there is no diversity jurisdiction. And follow that up
13 again, trying to basically avoid the need to waste the court's
14 time and, frankly, our time to have to address this. Whereas,
15 frankly, all of this, I think, could have been addressed months
16 ago without your Honor's time being wasted, where we could
17 hopefully have demonstrated to the plaintiffs that their theory
18 of diversity jurisdiction doesn't hold up at all, and it's
19 really based on premises that are just not supported in the law
20 whatsoever.

21 Rule 11 requires a reasonable investigation. There
22 is, actually, plenty of case law, your Honor, that talks about
23 invoking the court's jurisdiction inappropriately. What we are
24 hearing is, the plaintiffs are asking your Honor to maintain
25 some sort of discretionary jurisdiction. There never was

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1 jurisdiction. We were prepared to tell them and talk to them
2 about that, and we did it in writing over and over. And rather
3 than engaging us, we are here.

4 I will note one other thing, your Honor. In the
5 leadup to this conference and the request for this conference,
6 your Honor's rules require us to file a letter asking for the
7 conference. Rather than actually complying with your Honor's
8 rule and actually writing a response, so we all could learn
9 what the actual theory of jurisdiction is, they just ignored
10 that as well, which brings us to this place as well.

11 I would ask that, if we are permitted to make the
12 motion, if we actually have to make the motion, that we also be
13 allowed to make a Rule 11 motion, because there is absolutely
14 no legal basis for what they are arguing.

15 THE COURT: Let me get a little bit more from
16 plaintiffs' counsel as to what it is you're talking about when
17 you're talking about New York and not on behalf of the other
18 entities.

19 What exactly are you talking about?

20 MR. NASIR: Your Honor, with respect to the
21 unincorporated association of the MLB, coupled with all the
22 various members throughout the various states, the acts that
23 were conducted by the MLB that is underlying plaintiffs'
24 allegations in this complaint deal directly with the MLB's
25 organizational unit, which is based in New York, as to the acts

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1 that they committed against the plaintiff.

2 This is not a matter of whether the New York Yankees
3 or a team in Florida or a team in Texas engaged in tortious
4 acts against the plaintiff. This is clearly acts that were
5 conducted by this organization, the MLB, and its employees or
6 its principals.

7 THE COURT: Just to be clear, you're still talking
8 about actions performed by MLB?

9 MR. NASIR: Yes, and its principals.

10 THE COURT: When you say "and its principals," what
11 are you talking about?

12 MR. NASIR: I am talking about the defendants in this
13 matter, which are the people hired or retained by the MLB as an
14 unincorporated association, the commissioner of the MLB, the
15 commissioner of baseball.

16 THE COURT: How do the parties wish to proceed?

17 Let me find out, how does defense counsel wish to
18 proceed?

19 MR. KOBRE: If I have to, I will file a motion to
20 dismiss.

21 May I add the fact that we actually like this forum,
22 but what we do, we are compelled to do, in the sense that the
23 court has no jurisdiction. And the theory that he has even
24 proffered, your Honor, frankly, there is not any support in the
25 law whatsoever to what he is actually saying.

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1 If we have to move, frankly, with all due respect, I
2 think we also should be entitled to at least have the clients'
3 fees paid. There is no basis for it. The efforts to address
4 this, they just ignored.

5 I will say, your Honor, for four years now we have
6 been dealing with this defendant on and off, and now we were
7 forced to endure the release of the complaint in this case to
8 the press before filing, a press conference talking about a
9 federal case, which basically turned out was never supposed to
10 be a federal case.

11 We think the case should be dismissed and we think,
12 respectfully, your Honor, that sanctions should be awarded.
13 There has been no articulation of a theory of jurisdiction for
14 this court that we could even sink our teeth into.

15 THE COURT: What is the plaintiffs' position regarding
16 the citizenship of the other defendants? You named several
17 other individual defendants here. I didn't see in the
18 complaint anything regarding the citizenship of those
19 defendants either.

20 MR. NASIR: Your Honor, I believe, upon information
21 and belief, it is based upon the MLB's, the office of the
22 commissioner of baseball, them being retained and them being
23 principals of that unincorporated association are citizens of
24 New York.

25 MR. KOBRE: If I may, your Honor?

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1 they have added claims and they have added and removed parties.
2 We are through now, we have had a number of amendments. This
3 is now amendment -- the amended complaint, they call it is the
4 second amended complaint.

5 I guess, I know I sound a little bit like a broken
6 record, your Honor, but as you can probably tell, we have been
7 dealing with this individual for a long time. I know I am sort
8 of rounding around. When we tried to make efforts to try to
9 short-circuit it, we got totally shut down and repeatedly told,
10 file your motion, file your motion.

11 Well, that's why we are asking for permission to file
12 the motion.

13 THE COURT: No, I am not anticipating need for another
14 premotion conference. What I am anticipating is giving the
15 plaintiffs one opportunity to file an amended complaint, and
16 clearly state what your position is on who is a citizen of what
17 state and to be as clear as you can in terms of your basis for
18 jurisdiction, and then we would obviate the need for a
19 premotion conference.

20 I would just set a schedule and give the defendants an
21 opportunity to file their motion to dismiss. Because my sense
22 is, whatever the plaintiffs put in the amended complaint, that
23 the defendants are going to want to file a motion to dismiss at
24 this point, at least for lack of subject matter jurisdiction,
25 or am I totally off base there?

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1 MR. KOBRE: No, we will. We don't think there is
2 jurisdiction.

3 THE COURT: All right. How does that sound to
4 plaintiffs' counsel?

5 MR. NASIR: That sounds fine.

6 THE COURT: All right. Can plaintiffs' counsel file
7 an amended complaint in a week?

8 MR. NASIR: That's fine.

9 THE COURT: Let's have that filed by November 3.
10 We will go ahead and set a schedule for the motion to
11 dismiss.

12 Let's give the defendants three weeks to file the
13 motion to dismiss, which takes us to when, Tara?

14 THE DEPUTY CLERK: That would actually be
15 Thanksgiving, Judge.

16 The following week is December 1.

17 THE COURT: Let's go four weeks into December 1.

18 We will give the plaintiffs four weeks to respond. We
19 will give you something later in that first week of January.
20 How about January 4 to respond.

21 We will give the defendants a week to file any reply.
22 Let's have that by January 11.

23 MR. KOBRE: Your Honor, may I just press one more
24 thing, if I could, just because we came into here completely
25 blind as to what the theory of jurisdiction would be.

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1 Is it your Honor's intention that the plaintiffs, in
2 their amended complaint, are going to not only lay out whatever
3 the facts are that they say support it, but actually articulate
4 what their theory of jurisdiction actually is? If not --

5 THE COURT: What I am anticipating is that they will
6 lay out -- it appears that the plaintiffs' position regarding
7 jurisdiction is diversity of citizenship.

8 MR. KOBRE: Right.

9 THE COURT: The plaintiffs will restate that, but the
10 plaintiffs, hopefully, will be more clear in terms of which
11 state the plaintiffs are citizens of, and which state or states
12 they believe each defendant is a citizen of. But, in terms of,
13 I don't want case law in the complaint.

14 MR. KOBRE: I understand that. We are just looking so
15 we knew what we were shooting at, essentially, when it
16 ultimately comes.

17 Your Honor, on the Rule 11, I recognize you're going
18 to allow them to amend. Are we permitted, if we choose, in
19 addition to the motions, to file what we need to seek
20 permission at that time, your Honor?

21 Because the one thing I will say is, it's also,
22 hopefully, possible that upon looking up what the law is, that
23 the plaintiffs might actually come to the decision, to the
24 conclusion that, despite what we really all want, frankly, this
25 court just doesn't have jurisdiction. Then we don't have to go